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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/598,733

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D'art Daniel David Braeder

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EXAMINER

PRANGE, SHARON M

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

06/07/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/598,733

Applicant(s)

BRAEDER ET AL.

Examiner

SHARON M. PRANGE

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-27 and 29-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-27 and 29-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 22-27, 29-31, 36, 37, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP-3059476, herein JP '476, in view of Pieri (US 2003/0075561), and Lee et al. (US 6,612,769), herein Lee.

JP '476 discloses a dispensing device having a respective receptacle (3) for each of two substances (A, B), and a line of fold (2) between the receptacles. The device is foldable about the line of fold so that the receptacles are superimposed (Fig. 1, 3). A rupturable outlet (5) is defined for each receptacle. The outlets converge towards the line of fold (Fig. 2). When the device is folded the outlets are superposed for dispensing and mixing the two substances, and may be manipulated by a user in a one-handed operation (Fig. 5). The receptacles and outlets are disposed so that they are transposed mirror images of each other about the line of fold. The outlets include a weakened region in the form of a tear line (6). The outlets have a flat edge created by the cover material (7) when the device is ruptured along the tear line. The device has two flexible laminae (3, 7) which are sealed together to define the two receptacle (Fig. 2). The outlets are capable of being aligned in a one-handed operation and the substances simultaneously dispensed, mixed, and applied (Fig. 5). (paragraphs 0013-0017, machine translation)

JP '476 does not disclose indicia on the device. Pieri teaches providing indicia on a single-use dispensing device (paragraphs 0008, 0018, 0019; Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided indicia, as taught by Lee, on the device of JP '476 in order to provide additional information to the user.

The combination of JP '476 and Pieri discloses the claimed invention except for the specific arrangement and/or content of indicia (printed matter) set forth in the claim(s). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included indicia indicating the placement of a thumb and forefinger of a user since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of indicia does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter e.g. indicia and the substrate e.g. dispensing device which is required for patentability.

The combination of JP '476 and Pieri does not disclose that the receptacles have a circular base with a flat upper surface. JP '476 does teach that the receptacles may be one of a variety of different shapes (as seen in Fig. 1, 6), and that the receptacle has

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a flat upper surface (Fig. 1, 3). Lee teaches that a dispensing receptacle (chambers 26-32) may be circular in shape (column 5, lines 24-42; Fig. 1, 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to have made the receptacles JP '476 a circular shape, as taught by Lee, as this would be a matter of obvious design choice. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

Regarding claims 30 and 31, the combination of JP '476, Pieri, and Lee discloses the claimed invention except for the material of the laminae. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used, for example, foil or polyethylene in order to use inexpensive materials which are watertight. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 41, the combination of JP '476, Pieri, and Lee discloses the general conditions of the claimed invention except for the express disclosure of radius of the base and top of the receptacles. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the radius of the base approximately 7.5 mm and the radius of the top approximately 5 mm, since the claimed values are merely an optimum or workable range. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

3. Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '476, Pieri, and Lee, as applied to claims 22-27, 29-31, 36, 37, and 40, further in view of Fukushima (US Patent No. 4,790,429).

JP '476 does not disclose the type of substances stored in the receptacles.

Fukushima teaches that foodstuffs or medical substances may be stored in a single-use dispensing device with two separate receptacles (column 1, lines 48-51). It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided foodstuffs or medical substances in the dispensing device of JP '476 as it is well known to provide these substances in a container in which they are stored separately but then dispensed and mixed simultaneously.

4. Claims 32, 33, 38, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '476, Pieri, and Lee, as applied to claims 22-27, 29-31, 36, 37, and 40, further in view of Bollmeier (US Patent No. 3,074,544).

JP '476 does not disclose the type of substances stored in the receptacles.

Bollmeier teaches that epoxy and a hardener (curing agent) may be stored in a single-use dispensing device with two separate receptacles (column 1, lines 61-70). It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided epoxy and a hardener in the dispensing device of JP '476 as it is well known to provide these substances in a container in which they are stored separately but then mixed together and dispensed.

Response to Arguments

Applicant argues that Suchan is not prior art to the claimed invention. The rejection over Suchan has been withdrawn, and new prior art has been applied.

Applicant has requested a translation of the JP 3059475 reference. A machine translation is included with this Office Action. A human translation has been requested, and will be forwarded to Applicant as soon as it has been completed.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHARON M. PRANGE whose telephone number is (571)270-5280. The examiner can normally be reached on M-F 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571) 272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. M. P./ 6/2/11
Examiner, Art Unit 3765

/JILA M MOHANDESI/
Primary Examiner, Art Unit 3765